

BOARD OF APPEALS CASE NO. 5478

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BEFORE THE

APPLICANTS: J. Ralph Medley & Korolo LLC

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ZONING HEARING EXAMINER

REQUEST: Special Exception to permit a  
restaurant in the B1 District

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 2/16/05 & 2/23/05

HEARING DATE: April 11, 2005

Record: 2/18/05 & 2/25/05

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### ZONING HEARING EXAMINER'S DECISION

The Applicants, J. Ralph Medley, Robert & Sandra Glock and Augustine & Deborah Ciresi, are seeking a Special Exception, pursuant to Section 267-53H(7) of the Harford County Code, to permit a restaurant in the B1/Neighborhood Business District.

The subject property is located at 900 Philadelphia Road, Joppa, Maryland 21085 in the First Election District, and is more particularly identified on Tax Map 65, Grid 2B, Parcel 925. The parcel contains approximately 1.22 acres. Before presenting testimony, the Applicant submitted an amendment to the Application, changing the contract purchaser to Korolo LLC.

The Applicant, Mr. J. Ralph Medley, appeared and testified that he is a business owner and land developer. He acquired the subject property in December 2003. According to the witness, the parcel is improved by a structure previously used as a restaurant operating under the name "Nor Mar". Prior to becoming known as "Nor Mar", the structure housed a restaurant named Filbert's. Mr. Medley indicated that he began patronizing restaurants on the subject property in 1951, and stated that the premises has been continuously operated as a restaurant since that time.

After purchasing the property in 2003, Mr. Medley renovated the existing commercial building and ran a public sewer line to the site. He spent over \$150,000 on the aforesaid improvements. Mr. Medley purchased the property with the intent of opening a restaurant, because the subject parcel had always contained food service establishments. After purchasing the property he was informed by the Department of Planning and Zoning that the restaurant was now a nonconforming use. He was also advised that because the nonconforming use was abandoned, by the prior owner, the property's non conforming status would expire on May 10, 2005.

The Applicant introduced a letter dated October 15, 2004 (Applicant's Exhibit 2), from his counsel to the Harford County Law Department, and, the Harford County Department of Planning and Zoning. That letter set forth Applicant's contention that the involuntary secession of the previous non conforming use was insufficient to constitute an abandonment of that use. He also introduced an October 27, 2004 letter to his attorney (Applicant's Exhibit 3) from Deputy County Attorney, Nancy L. Giorno. That letter stated the County's position that the referenced nonconforming use "was abandoned on May 11, 2004 when the liquor board was informed by the (previous) property owner that he could not continue the business and was going to allow his license to expire."

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Mr. Medley testified that he has a contract purchaser for the property, which intends to open a new restaurant on the site. He also indicated that in his opinion, the proposed special exception use will cause no detrimental impact to surrounding properties because there has been a restaurant operating continuously at that location since prior to 1951.

Mr. Medley testified that Mr. Wheeler, from the Harford County Department of Public Works, was extremely supportive of his proposal to run public sewer to the subject parcel. He further testified that while running that line, he provided a direct benefit to the Joppa Magnolia Volunteer Fire Company. The fire department property, which is located adjacent to the subject parcel, has a catering facility onsite. The Health Department was preparing to shut down the catering facility due to septic problems. However, in the course of running public sewer to the subject parcel, Mr. Medley tied the fire department property into the public sewer line, at his own expense, as a donation to the department. He also ran the sewer line underneath Maryland Route 7 to provide an access point for commercial uses on the opposite side of the street. The subject property has not yet been connected to the sewer line.

Mr. Jeffrey Deegan, a principal with the engineering firm of Wilson, Deegan and Associates, appeared and qualified as an expert engineer and site planner. Mr. Deegan testified that he is familiar with the property, and visited the site as recently as last week. He indicated that the property is zoned B1, and contains approximately 1.22 acres. The witness has been familiar with the subject parcel since the mid 1970's. He described improvements on the parcel as an 8,000 square foot commercial building with parking facilities. The witness also stated that the building was continuously operated as a restaurant from the mid 1970's until it was recently closed by the Harford County Health Department due to septic problems.

Referring to the site plan (Applicant's Exhibit 4) the witness indicated that the subject parcel is located in the northwest quadrant of Philadelphia Road and Old Mountain Road. The Joppa Magnolia Volunteer Fire Company parcel is located north of the subject parcel. The property to the south contains a liquor store, and the property to the west is a commercial lot currently used to store roofing equipment. The property to the east contains a High's convenience store and gas station. The witness testified that the subject parcel is accessible from both Old Mountain Road and Philadelphia Road.

Mr. Deegan then described the aerial photograph, designated as Attachment 11, and to the Department of Planning and Zoning Staff Report (Applicant's Exhibit 5B). He stated that the subject parcel is located in the middle of that photograph. Maryland Route 7 runs parallel to the subject property, dissecting the photograph from top to bottom. Old Mountain crosses Route 7 near the top of the photograph. The firehouse property is located along the right border of the photograph, adjacent to the subject parcel. The liquor store is on the opposite side of Maryland Route 7, the commercial storage property is to the left and the High's convenience store is visible to the right of the subject property.

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Mr. Deegan described several photographs, designated as Attachment 10 to the Department of Planning and Zoning Staff Report (Applicant's Exhibit 5A). He stated that the first two photographs on page one of that exhibit show the subject parcel from Maryland Route 7. The second two photographs depict the restaurant from Old Mountain Road South. The top photograph on page two shows the commercial building from Old Mountain Road South, with the fire department catering hall in the background, to the left of the building. The second photograph was taken from the fire department property facing toward the subject parcel. The third photograph was taken from the front door of the property looking across Maryland Route 7 toward the liquor store. The fourth photograph shows the zoning notice posted in front of the restaurant building. The top photograph on page three is a closeup of the zoning notice. The bottom picture on that page shows the Nor Mar Restaurant sign in the foreground, and the roof of the existing commercial structure in the background, behind a parked storage trailer.

The witness testified that he had reviewed the requirements of Harford County Code Section 267-53H(7) and determined that the Applicant can meet or exceed all requirements set forth therein. The property is currently zoned B1, the restaurant is in compliance with all parking and access requirements, and Maryland Route 7, which provides access to the parcel, is a minor arterial road. Parking for the facility will be dictated by the number of seats in the commercial structure, which is not yet known, however, the property currently contains 90 parking spaces.

Mr. Deegan indicated that he was retained by Mr. Medley in late 2003 to design a public sewer system for the subject parcel. By 2004 he had prepared and obtained approval for both a public sewer line and the required right of way. The actual construction of the sewer line was done by J. M. Komar Construction, and financed by Mr. Medley. Mr. Deegan indicated that he met with Mr. Wheeler from the Harford County Department of Public Works prior to the installation of the aforementioned sewer line. Mr. Wheeler informed him at that meeting that the Department was extremely anxious to have public sewer run to the subject area. The witness affirmed that the referenced sewer line provides a direct benefit to the Joppa Magnolia Volunteer Fire Company by allowing it to continue operation of its catering facility.

Mr. Deegan further testified that he is familiar with the standards set forth in Harford County Code Section 267-9I, and that in his opinion, the proposed use meets all requirements contained in that provision. He stated that the proposed special exception use would have no impact on people living in the area because the primary uses adjacent to the subject property are commercial. It will have no impact on traffic because the subject parcel is located at the intersection of two arterial roads. In addition, the property is easily accessible from all directions, and it is located in close proximity to Interstate 95.

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The witness emphasized that the property has been continually utilized as a restaurant for many years, and opined that this use is consistent with other commercial uses found in the area. He stated that the property will be serviced by the Harford County Sheriff and the Maryland State Police. Public sewer is available to the site. Trash collection will be provided by a private contractor. Mr. Deegan also testified that the proposed special exception use is consistent with generally accepted engineering principals, that there are no institutional uses sensitive environmental features or cultural or historical landmarks in the area of the subject property. Finally, he Mr. Deegan testified that the requested special exception use should be granted because in his professional opinion, it will have no adverse impact on any surrounding property.

Mr. Anthony McClune, Chief, Current Planning Division, appeared and testified on behalf of the Department of Planning and Zoning regarding the findings of fact, and recommendations made by that agency. The Department reviewed the Application and Attachments, and visited the site and surrounding area. According to Mr. McClune, a portion of the existing building has been present on the site since prior to 1957. Additions were constructed in 1971, 1974, and 1977. Mr. McClune summarized the findings set forth in the Staff Report as follows: “under the 1957 Zoning Ordinance restaurants were permitted uses in the B1/Neighborhood Business District ... This changed with the adoption of the 1982 Zoning Code allowing them as Special Exceptions in the B1/Neighborhood Business District and first permitted as principal use in the B2/Community Business District.”

Mr. McClune indicated that the Department recognizes the subject property’s current non-conforming use status, but stated that requesting a Special Exception gives the Department an opportunity to bring the property into compliance with today’s zoning regulations. According to Mr. McClune, the proposed special exception use meets or exceeds all requirements set forth in Harford County Code Section 267-53H(7). Although the restaurant is not yet open, and the number of seats not yet determined, the final decision regarding the number of seats allowed relative to the number of available parking spaces will be made during the Development Advisory Committee review. The witness also emphasized that Maryland Route 7, which provides access to the property is an arterial road.

Mr. McClune further testified that the Department had considered all provisions set forth in Harford County Code Section 267-9I in connection with subject request, and determined that the proposed special exception meets all requirements of that provision. He opined that the restaurant will provide a necessary service to the community, and stated that in his opinion, the proposed use, at the proposed location, would not cause any adverse impact to adjoining properties. He also stated that the proposed use would cause no greater impact at the subject location than it would cause elsewhere within the B1/Neighborhood Business District. The Department recommended approval of the subject Application in its March 9, 2005 Staff Report, subject to two conditions set forth in that report.

No witnesses appeared in opposition to the subject Application.

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### **CONCLUSION**

The Applicants are seeking a Special Exception pursuant to Section 267-53H(7) of the Harford County Code to permit a restaurant in the B1/Neighborhood Business District.

The relevant Provisions of the Harford County Code with regard to special exception uses are set forth below.

Section 267-51 provides:

“Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

Section 267-52 provides:

“General Regulations

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant of approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”

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Section 267-53H(7) provides:

The special exceptions enumerated herein, in addition to other conditions as may be imposed by the Board, shall comply with the following requirements:

- (7) Restaurants. These uses may be granted in the VB and B1 Districts provided that:
  - (a) The parking and access requirements of this Part 1 shall apply.
  - (b) The use is located with direct access to an arterial or collector road.

Section 267-9I provides as follows:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise on the use of surrounding properties.
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.

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- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.
- (10) The preservation of cultural and historic landmarks.”

The Court of Appeals set forth the standard to be used in determining requests for special exception uses in the Schultz v. Pritts case, stating that:

“...[t]he special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. (*Emphasis in original*) 291 Md. 1, 11, 432 A.2d 1319 (1981).

The Schultz court further held that “the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327; citing, Anderson v. Sawyer, 23 Md. App. at 624-25, 329 A. 2d at 724 (1974) and Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31, 214 A.2d 146 (1965).

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The Hearing Examiner finds that the Applicants met their burden of proving that the requested use meets all standards and requirements prescribed by the Harford County Code. The subject parcel is zoned B1/Neighborhood Business District. Although the number of seats to be provided in the proposed restaurant has not yet been determined, the property currently contains 90 parking spaces. The number of seats allowed in relation to available parking will be determined during the Development Advisory Committee review process. In addition, the parcel has direct access from both Maryland Route 7 and Old Philadelphia Road, both of which are minor arterial roads.

The Hearing Examiner finds that the Applicants have met their burden of proof that the proposed use could be conducted without detriment to the neighborhood, or adverse affect on the public interest. The subject parcel is surrounded by existing commercial uses. There has been a restaurant operating on the subject site since at least 1951. The proposed restaurant will continue to provide a necessary service to members of the community.

The Hearing Examiner adopts the findings of both Mr. Deegan, and the Department of Planning and Zoning, that the proposed use meets all criteria set forth in Section 267-9I of the Harford County Code. The Hearing Examiner also finds, for reasons set forth above, that the proposed use, at the proposed location, would not result in any adverse impact to surrounding properties. Finally, the Hearing Examiner finds that the proposed use will not have any greater impact on adjacent properties at this location than it would have if it were located elsewhere within the B1/Neighborhood Business District.

The Hearing Examiner recommends approval of the Application subject to the following conditions:

1. The Applicants shall prepare a detailed site plan to be reviewed and approved through the Development Advisory Committee (DAC).
2. The Applicant shall obtain all necessary permits and inspections prior to commencing use and occupancy of the property.

Date: APRIL 25, 2005

Rebecca A. Bryant  
Zoning Hearing Examiner